

§ 438.10 Information requirements.

(a) *Definitions.* As used in this section, the following terms have the indicated meanings:

Limited English proficient (LEP) means potential enrollees and enrollees who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English may be LEP and may be eligible to receive language assistance for a particular type of service, benefit, or encounter.

Prevalent means a non-English language determined to be spoken by a significant number or percentage of potential enrollees and enrollees that are limited English proficient.

Readily accessible means electronic information and services which comply with modern accessibility standards such as section 508 guidelines, section 504 of the Rehabilitation Act, and W3C's Web Content Accessibility Guidelines (WCAG) 2.0 AA and successor versions.

(b) *Applicability.* The provisions of this section apply to all managed care programs which operate under any authority in the Act.

(c) *Basic rules.* (1) Each State, enrollment broker, MCO, PIHP, PAHP, PCCM, and PCCM entity must provide all required information in this section to enrollees and potential enrollees in a manner and format that may be easily understood and is readily accessible by such enrollees and potential enrollees.

(2) The State must utilize its beneficiary support system required in § 438.71.

(3) The State must operate a Web site that provides the content, either directly or by linking to individual MCO, PIHP, PAHP, or PCCM entity Web sites, specified in paragraphs (g), (h), and (i) of this section.

(4) For consistency in the information provided to enrollees, the State must develop and require each MCO, PIHP, PAHP and PCCM entity to use:

(i) Definitions for managed care terminology, including appeal, co-payment, durable medical equipment, emergency medical condition, emergency medical transportation, emergency room care, emergency services, excluded services, grievance, habili-

tation services and devices, health insurance, home health care, hospice services, hospitalization, hospital outpatient care, medically necessary, network, non-participating provider, physician services, plan, preauthorization, participating provider, premium, prescription drug coverage, prescription drugs, primary care physician, primary care provider, provider, rehabilitation services and devices, skilled nursing care, specialist, and urgent care; and

(ii) Model enrollee handbooks and enrollee notices.

(5) The State must ensure, through its contracts, that each MCO, PIHP, PAHP and PCCM entity provides the required information in this section to each enrollee.

(6) Enrollee information required in this section may not be provided electronically by the State, MCO, PIHP, PAHP, PCCM, or PCCM entity unless all of the following are met:

(i) The format is readily accessible;

(ii) The information is placed in a location on the State, MCO's, PIHP's, PAHP's, or PCCM's, or PCCM entity's Web site that is prominent and readily accessible;

(iii) The information is provided in an electronic form which can be electronically retained and printed;

(iv) The information is consistent with the content and language requirements of this section; and

(v) The enrollee is informed that the information is available in paper form without charge upon request and provides it upon request within 5 business days.

(7) Each MCO, PIHP, PAHP, and PCCM entity must have in place mechanisms to help enrollees and potential enrollees understand the requirements and benefits of the plan.

(d) *Language and format.* The State must:

(1) Establish a methodology for identifying the prevalent non-English languages spoken by enrollees and potential enrollees throughout the State, and in each MCO, PIHP, PAHP, or PCCM entity service area.

(2) Make oral interpretation available in all languages and written translation available in each prevalent non-

English language. All written materials for potential enrollees must include taglines in the prevalent non-English languages in the State, as well as large print, explaining the availability of written translations or oral interpretation to understand the information provided and the toll-free telephone number of the entity providing choice counseling services as required by § 438.71(a). Large print means printed in a font size no smaller than 18 point.

(3) Require each MCO, PIHP, PAHP, and PCCM entity to make its written materials that are critical to obtaining services, including, at a minimum, provider directories, enrollee handbooks, appeal and grievance notices, and denial and termination notices, available in the prevalent non-English languages in its particular service area. Written materials must also be made available in alternative formats upon request of the potential enrollee or enrollee at no cost. Auxiliary aids and services must also be made available upon request of the potential enrollee or enrollee at no cost. Written materials must include taglines in the prevalent non-English languages in the state, as well as large print, explaining the availability of written translation or oral interpretation to understand the information provided and the toll-free and TTY/TDY telephone number of the MCO's, PIHP's, PAHP's or PCCM entity's member/customer service unit. Large print means printed in a font size no smaller than 18 point.

(4) Make interpretation services available to each potential enrollee and require each MCO, PIHP, PAHP, and PCCM entity to make those services available free of charge to each enrollee. This includes oral interpretation and the use of auxiliary aids such as TTY/TDY and American Sign Language. Oral interpretation requirements apply to all non-English languages, not just those that the State identifies as prevalent.

(5) Notify potential enrollees, and require each MCO, PIHP, PAHP, and PCCM entity to notify its enrollees—

(i) That oral interpretation is available for any language and written translation is available in prevalent languages;

(ii) That auxiliary aids and services are available upon request and at no cost for enrollees with disabilities; and

(iii) How to access the services in paragraphs (d)(5)(i) and (ii) of this section.

(6) Provide, and require MCOs, PIHPs, PAHPs, PCCMs, and PCCM entities to provide, all written materials for potential enrollees and enrollees consistent with the following:

(i) Use easily understood language and format.

(ii) Use a font size no smaller than 12 point.

(iii) Be available in alternative formats and through the provision of auxiliary aids and services in an appropriate manner that takes into consideration the special needs of enrollees or potential enrollees with disabilities or limited English proficiency.

(iv) Include a large print tagline and information on how to request auxiliary aids and services, including the provision of the materials in alternative formats. Large print means printed in a font size no smaller than 18 point.

(e) *Information for potential enrollees.*

(1) The State or its contracted representative must provide the information specified in paragraph (e)(2) of this section to each potential enrollee, either in paper or electronic form as follows:

(i) At the time the potential enrollee first becomes eligible to enroll in a voluntary managed care program, or is first required to enroll in a mandatory managed care program; and

(ii) Within a timeframe that enables the potential enrollee to use the information in choosing among available MCOs, PIHPs, PAHPs, PCCMs, or PCCM entities.

(2) The information for potential enrollees must include, at a minimum, all of the following:

(i) Information about the potential enrollee's right to disenroll consistent with the requirements of § 438.56 and which explains clearly the process for exercising this disenrollment right, as well as the alternatives available to the potential enrollee based on their specific circumstance;

(ii) The basic features of managed care;

(iii) Which populations are excluded from enrollment, subject to mandatory enrollment, or free to enroll voluntarily in the program. For mandatory and voluntary populations, the length of the enrollment period and all disenrollment opportunities available to the enrollee must also be specified;

(iv) The service area covered by each MCO, PIHP, PAHP, PCCM, or PCCM entity;

(v) Covered benefits including:

(A) Which benefits are provided by the MCO, PIHP, or PAHP; and

(B) Which, if any, benefits are provided directly by the State.

(C) For a counseling or referral service that the MCO, PIHP, or PAHP does not cover because of moral or religious objections, the State must provide information about where and how to obtain the service;

(vi) The provider directory and formulary information required in paragraphs (h) and (i) of this section;

(vii) Any cost-sharing that will be imposed by the MCO, PIHP, PAHP, PCCM, or PCCM entity consistent with those set forth in the State plan;

(viii) The requirements for each MCO, PIHP or PAHP to provide adequate access to covered services, including the network adequacy standards established in § 438.68;

(ix) The MCO, PIHP, PAHP, PCCM and PCCM entity's responsibilities for coordination of enrollee care; and

(x) To the extent available, quality and performance indicators for each MCO, PIHP, PAHP and PCCM entity, including enrollee satisfaction.

(f) *Information for all enrollees of MCOs, PIHPs, PAHPs, and PCCM entities: General requirements.* (1) The MCO, PIHP, PAHP and, when appropriate, the PCCM entity, must make a good faith effort to give written notice of termination of a contracted provider, within 15 calendar days after receipt or issuance of the termination notice, to each enrollee who received his or her primary care from, or was seen on a regular basis by, the terminated provider.

(2) The State must notify all enrollees of their right to disenroll consistent with the requirements of § 438.56 at least annually. Such notification must clearly explain the process for ex-

ercising this disenrollment right, as well as the alternatives available to the enrollee based on their specific circumstance. For States that choose to restrict disenrollment for periods of 90 days or more, States must send the notice no less than 60 calendar days before the start of each enrollment period.

(3) The MCO, PIHP, PAHP and, when appropriate, the PCCM entity must make available, upon request, any physician incentive plans in place as set forth in § 438.3(i).

(g) *Information for enrollees of MCOs, PIHPs, PAHPs and PCCM entities—Enrollee handbook.* (1) Each MCO, PIHP, PAHP and PCCM entity must provide each enrollee an enrollee handbook, within a reasonable time after receiving notice of the beneficiary's enrollment, which serves a similar function as the summary of benefits and coverage described in 45 CFR 147.200(a).

(2) The content of the enrollee handbook must include information that enables the enrollee to understand how to effectively use the managed care program. This information must include at a minimum:

(i) Benefits provided by the MCO, PIHP, PAHP or PCCM entity.

(ii) How and where to access any benefits provided by the State, including any cost sharing, and how transportation is provided.

(A) In the case of a counseling or referral service that the MCO, PIHP, PAHP, or PCCM entity does not cover because of moral or religious objections, the MCO, PIHP, PAHP, or PCCM entity must inform enrollees that the service is not covered by the MCO, PIHP, PAHP, or PCCM entity.

(B) The MCO, PIHP, PAHP, or PCCM entity must inform enrollees how they can obtain information from the State about how to access the services described in paragraph (g)(2)(i)(A) of this section.

(iii) The amount, duration, and scope of benefits available under the contract in sufficient detail to ensure that enrollees understand the benefits to which they are entitled.

(iv) Procedures for obtaining benefits, including any requirements for service authorizations and/or referrals for specialty care and for other benefits

not furnished by the enrollee's primary care provider.

(v) The extent to which, and how, after-hours and emergency coverage are provided, including:

(A) What constitutes an emergency medical condition and emergency services.

(B) The fact that prior authorization is not required for emergency services.

(C) The fact that, subject to the provisions of this section, the enrollee has a right to use any hospital or other setting for emergency care.

(vi) Any restrictions on the enrollee's freedom of choice among network providers.

(vii) The extent to which, and how, enrollees may obtain benefits, including family planning services and supplies from out-of-network providers. This includes an explanation that the MCO, PIHP, or PAHP cannot require an enrollee to obtain a referral before choosing a family planning provider.

(viii) Cost sharing, if any is imposed under the State plan.

(ix) Enrollee rights and responsibilities, including the elements specified in § 438.100.

(x) The process of selecting and changing the enrollee's primary care provider.

(xi) Grievance, appeal, and fair hearing procedures and timeframes, consistent with subpart F of this part, in a State-developed or State-approved description. Such information must include:

(A) The right to file grievances and appeals.

(B) The requirements and timeframes for filing a grievance or appeal.

(C) The availability of assistance in the filing process.

(D) The right to request a State fair hearing after the MCO, PIHP or PAHP has made a determination on an enrollee's appeal which is adverse to the enrollee.

(E) The fact that, when requested by the enrollee, benefits that the MCO, PIHP, or PAHP seeks to reduce or terminate will continue if the enrollee files an appeal or a request for State fair hearing within the timeframes specified for filing, and that the enrollee may, consistent with state policy, be required to pay the cost of serv-

ices furnished while the appeal or state fair hearing is pending if the final decision is adverse to the enrollee.

(xii) How to exercise an advance directive, as set forth in § 438.3(j). For PAHPs, information must be provided only to the extent that the PAHP includes any of the providers described in § 489.102(a) of this chapter.

(xiii) How to access auxiliary aids and services, including additional information in alternative formats or languages.

(xiv) The toll-free telephone number for member services, medical management, and any other unit providing services directly to enrollees.

(xv) Information on how to report suspected fraud or abuse;

(xvi) Any other content required by the State.

(3) Information required by this paragraph to be provided by a MCO, PIHP, PAHP or PCCM entity will be considered to be provided if the MCO, PIHP, PAHP or PCCM entity:

(i) Mails a printed copy of the information to the enrollee's mailing address;

(ii) Provides the information by email after obtaining the enrollee's agreement to receive the information by email;

(iii) Posts the information on the Web site of the MCO, PIHP, PAHP or PCCM entity and advises the enrollee in paper or electronic form that the information is available on the Internet and includes the applicable Internet address, provided that enrollees with disabilities who cannot access this information online are provided auxiliary aids and services upon request at no cost; or

(iv) Provides the information by any other method that can reasonably be expected to result in the enrollee receiving that information.

(4) The MCO, PIHP, PAHP, or PCCM entity must give each enrollee notice of any change that the State defines as significant in the information specified in this paragraph (g), at least 30 days before the intended effective date of the change.

(h) *Information for all enrollees of MCOs, PIHPs, PAHPs, and PCCM entities—Provider Directory.* (1) Each MCO, PIHP, PAHP, and when appropriate,

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the PCCM entity, must make available in paper form upon request and electronic form, the following information about its network providers:

- (i) The provider's name as well as any group affiliation.
- (ii) Street address(es).
- (iii) Telephone number(s).
- (iv) Web site URL, as appropriate.
- (v) Specialty, as appropriate.
- (vi) Whether the provider will accept new enrollees.
- (vii) The provider's cultural and linguistic capabilities, including languages (including American Sign Language) offered by the provider or a skilled medical interpreter at the provider's office, and whether the provider has completed cultural competence training.
- (viii) Whether the provider's office/facility has accommodations for people with physical disabilities, including offices, exam room(s) and equipment.

(2) The provider directory must include the information in paragraph (h)(1) of this section for each of the following provider types covered under the contract:

- (i) Physicians, including specialists;
- (ii) Hospitals;
- (iii) Pharmacies;
- (iv) Behavioral health providers; and
- (v) LTSS providers, as appropriate.

(3) Information included in a paper provider directory must be updated at least monthly and electronic provider directories must be updated no later than 30 calendar days after the MCO, PIHP, PAHP or PCCM entity receives updated provider information.

(4) Provider directories must be made available on the MCO's, PIHP's, PAHP's, or, if applicable, PCCM entity's Web site in a machine readable file and format as specified by the Secretary.

(i) *Information for all enrollees of MCOs, PIHPs, PAHPs, and PCCM entities: Formulary.* Each MCO, PIHP, PAHP, and when appropriate, PCCM entity, must make available in electronic or paper form, the following information about its formulary:

- (1) Which medications are covered (both generic and name brand).
- (2) What tier each medication is on.
- (3) Formulary drug lists must be made available on the MCO's, PIHP's,

PAHP's, or, if applicable, PCCM entity's Web site in a machine readable file and format as specified by the Secretary.

(j) *Applicability date.* This section applies to the rating period for contracts with MCOs, PIHPs, PAHPs, PCCMs, and PCCM entities beginning on or after July 1, 2017. Until that applicability date, states are required to continue to comply with § 438.10 contained in the 42 CFR parts 430 to 481, edition revised as of October 1, 2015.

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§ 438.12 Provider discrimination prohibited.

(a) *General rules.* (1) An MCO, PIHP, or PAHP may not discriminate in the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable State law, solely on the basis of that license or certification. If an MCO, PIHP, or PAHP declines to include individual or groups of providers in its provider network, it must give the affected providers written notice of the reason for its decision.

(2) In all contracts with network providers, an MCO, PIHP, or PAHP must comply with the requirements specified in § 438.214.

(b) *Construction.* Paragraph (a) of this section may not be construed to—

(1) Require the MCO, PIHP, or PAHP to contract with providers beyond the number necessary to meet the needs of its enrollees;

(2) Preclude the MCO, PIHP, or PAHP from using different reimbursement amounts for different specialties or for different practitioners in the same specialty; or

(3) Preclude the MCO, PIHP, or PAHP from establishing measures that are designed to maintain quality of services and control costs and are consistent with its responsibilities to enrollees.